

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

J. HENDERSON,

Petitioner,

CASE NO. 2:06-CV-12120

v.

HONORABLE LAWRENCE P. ZATKOFF

WARDEN WILLIE SMITH,

Respondent.

**ORDER DENYING PETITIONER'S MOTION
FOR DISCOVERY AND AN EVIDENTIARY HEARING**

This matter is pending before the Court on petitioner J. Henderson's combined motion for discovery and an evidentiary hearing. Petitioner is a state inmate who pleaded no contest to criminal sexual conduct in the second degree in 2003. In his habeas corpus petition, Petitioner alleges that (1) the unavailability of a transcript of his plea deprived him of his right to proper appellate review, (2) the plea bargain was illusory, (3) trial counsel was ineffective, and (4) the sentence of 270 months is invalid. The pending motion seeks discovery and an evidentiary hearing to support Petitioner's claim of innocence and to resolve a factual dispute concerning the nature of the plea agreement.

Petitioner has no absolute right to discovery, *Bracy v. Gramley*, 520 U.S. 899, 904 (1997), or to an evidentiary hearing, *see Blackledge v. Allison*, 431 U.S. 63, 80 (1977). And although the transcript of Petitioner's no contest plea apparently is missing, the trial court certified a statement of facts as a substitute for the missing plea transcript. Both the prosecutor and defense counsel approved the certified statement of facts as to form.

Neither an evidentiary hearing, nor discovery, are necessary at this time. Accordingly, Petitioner's motion [Doc. 8, June 6, 2006] is DENIED without prejudice.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: December 19, 2006

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on December 19, 2006.

s/Marie E. Verlinde
Case Manager
(810) 984-3290